

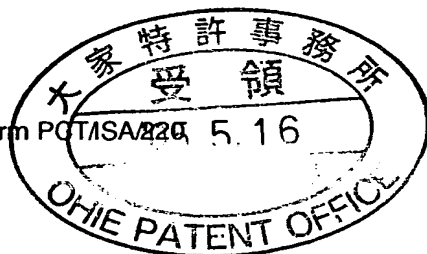
PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

see form PCT/ISA/220 5.16



WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/JP2005/001644

International filing date (day/month/year)
28.01.2005

Priority date (day/month/year)
06.02.2004

International Patent Classification (IPC) or both national classification and IPC
A61K7/50

Applicant
SHOWA DENKO K. K.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/JP2005/001644

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material:
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing:
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/JP2005/001644

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	11
	No: Claims	1,19
Inventive step (IS)	Yes: Claims	
	No: Claims	11
Industrial applicability (IA)	Yes: Claims	1-19
	No: Claims	

2. Citations and explanations

see separate sheet

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/JP2005/001644

IAP5 Rec'd PCT/PTO 31 JUL 2006

Reference is made to the following documents from the international search report :

- D1:** WO 99/62482 A (SHOWA DENKO K.K; YONEDA, TADASHI; MASATSUJI, EIKO; TSUZUKI, TOSHI; FUR) 9 December 1999 (1999-12-09)
- D2:** PATENT ABSTRACTS OF JAPAN vol. 2003, no. 10, 8 October 2003 (2003-10-08) & JP 2003 176211 A (SHOWA DENKO KK), 24 June 2003 (2003-06-24)
- D3:** TADROS T: "ADVANCES IN EMULSION SCIENCE FOR PERSONAL CARE APPLICATIONS" JOURNAL OF COSMETIC SCIENCE, SOCIETY OF COSMETIC CHEMISTS, NEW YORK, NY., US, vol. 52, no. 2, 2001, pages 138-154, XP001107113 ISSN: 1525-7886
- D4:** YONEDA TADASHI ET AL: "Surfactin sodium salt: an excellent bio-surfactant for cosmetics" CAPLUS, vol. 29, no. 12, 2001, XP002218400

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Novelty

Document **D1** discloses (tables 6, 12, 14 and examples 1 to 5) cosmetic compositions comprising the combination of features as required in present independent claim 1 ; table 6 for example discloses a preparation comprising as (a) anionic surfactant the Surfactin sodium salt (b) water (c) tocopherol and (d) castor oil.

Document **D2** discloses (abstract) an oily thickened gel-like composition comprising an anionic surfactant having lipopeptide structure, water and/or a polyhydric alcohol and an oily component ; said composition is said to be suitable for cosmetics.

Therefore, present independent claim 1 and 19 do not satisfy the criteria set forth in Article 33(2) PCT.

2. *Inventive step*

Even if the Applicant succeeds in overcoming the previous objection, the subject-matter of present claims 1 to 19 would still not satisfy the criteria set forth in Article 33(3)PCT for the following reasons :

The technical problem that the Applicant seeks to solve is to improve the storage stability of oil-based thickening gel compositions which comprise (a) an anionic surfactant having a lipopeptide structure, (b) water and/or a polyhydric alcohol having a valence of 3 or more and (d) an oil component.

The solution provided by the Applicant consists in the addition of tocopherol into the composition.

Document **D2**, which is considered to be the closest prior art, discloses cosmetic compositions comprising the composition object of the present independent claim 1.

As clearly stated by the Applicant on page 3, lines 3-7 of the present application, the storage instability of such compositions only occurs when the oil component is a polyoxyethylene sorbitol ether fatty acid ester and/or a polyoxyethylene sorbitol ether fatty acid ester.

However, said feature is not present in present independent claim 11 ; as long as the subject-matter of dependent claim 17 is not part of claim 11, a technical problem can not be recognized to the present application.

Moreover, all tests which have been provided by the Applicant all rely on the use of a very specific anionic surfactant, i.e the Surfactin (disclosed in **D3** and **D4** for its anti skin-irritation properties) and on the introduction of tocopherol in a specific amount, i.e comprised between 0.05 and 0.2% ; unless the Applicant can provide additional data with an other type of lipopeptide and other amounts of tocopherol capable of solving the problem, everything else will be considered as pure allegations since having no support.

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International application No.

PCT/JP2005/001644

The attention of the Applicant is drawn to the fact that table 3 appears not to fall within the scope of present independent claim 11 because the nature of the oil is not of the two compounds object of dependent claim 17.